PROPOSED AMENDMENT TO ADD SECTION 5.1 TO ARTICLE XIII OF THE ILLINOIS CONSTITUTION

That will be submitted to the voters November 6, 2012.



This pamphlet includes the proposed amendment; explanation of the proposed amendment; arguments in favor of the amendment; arguments against the amendment; form of ballot.

Published as set forth in House Joint Resolution 93 of the 97th General Assembly for the State of Illinois in compliance with the Illinois Constitutional Amendment Act by:

Jesse White • Secretary of State

To the Electors of the State of Illinois:

The purpose of a state constitution is to establish a structure for government and laws. The Illinois Constitution provides citizens with rights and protections; creates the executive, judicial, and legislative branches of government; clarifies the powers given to local governments; limits the taxing power of the State; and imposes certain restrictions on the use of taxpayer dollars. There are three ways to initiate change to the Illinois Constitution: (1) a constitutional convention may propose changes to any part; (2) the General Assembly may propose changes to any part; or (3) the people of the State by referendum may propose changes to the Legislative Article. Regardless of the method of initiating change, the people of Illinois must approve any changes of the Constitution before they become effective.

The proposed amendment adds Section 5.1 to the General Provisions Article of the Illinois Constitution. The new section would require a three-fifths majority vote to approve any pension or retirement benefit increase for public employees and officials. At the general election to be held on November 6, 2012, you will be called upon to decide whether the proposed amendment should become part of the Illinois Constitution.

PROPOSED AMENDMENT TO ARTICLE XIII OF THE ILLINOIS CONSTITUTION

Section 5.1 — Pension and Retirement Benefit Increases

(a) No bill, except a bill for appropriations, that provides a benefit increase under any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall become law without the concurrence of three-fifths of the members elected to each house of the General Assembly. If the Governor vetoes such a bill by returning it with objections to the house in which it originated, the provisions of Article IV, Section 9 shall govern the passage of that bill except that such bill shall not become law unless, upon its return, it is passed by a record vote of two-thirds of the members elected to each house of the General Assembly. If the Governor returns such a bill with specific recommendations for change to the house in which it originated, the provisions of Article IV, Section 9 shall govern the acceptance of those specific recommendations except that such recommendations may be accepted only by a record vote of two-thirds of the members elected to each house of the General Assembly, regardless of the bill's date of passage or effective date.

For purposes of this subsection, the term "benefit increase" means a change to any pension or other law that results in a member of a pension or retirement system receiving a new benefit or an enhancement to a benefit, including, but not limited to, any changes that (i) increase the amount of the pension or annuity that a member could receive upon retirement, or (ii) reduce or eliminate the eligibility requirements or other terms or conditions a member must meet to receive a pension or annuity upon retirement. The term "benefit increase" also means a change to any pension or other law that expands the class of persons who may become a member of any pension or retirement system or who may receive a pension or annuity from a pension or retirement system. An increase in salary or wage level, by itself, shall not constitute a "benefit increase" unless that increase exceeds limitations provided by law.

- (b) No ordinance, resolution, rule, or other action of the governing body, or an appointee or employee of the governing body, of any unit of local government or school district that provides an emolument increase to an official or employee that has the effect of increasing the amount of the pension or annuity that an official or employee could receive as a member of a pension or retirement system shall be valid without the concurrence of three-fifths of the members of that governing body. For purposes of this subsection, the term "emolument increase" means the creation of a new or enhancement of an existing advantage, profit or gain that an official or employee receives by virtue of holding office or employment, including, but not limited to, compensated time off, bonuses, incentives, or other forms of compensation. An increase in salary or wage level, by itself, shall not constitute an "emolument increase" unless that increase exceeds limitations provided by law.
- (c) No action of the governing body, or an appointee or employee of the governing body, of any pension or retirement system created or maintained for the benefit of officers or employees of the State, any unit of local government or school district, or any agency or instrumentality thereof that results in a beneficial determination shall be valid without the concurrence of three-fifths of the members of that governing body. For the purposes of this subsection, the term "beneficial determination" means an interpretation or application of pension or other law by the governing body, or an appointee or employee of the governing body, that reverses or supersedes a previous interpretation or application and either (i) results in an increase in the amount of the pension or annuity received by a member of the pension or retirement system or (ii) results in a person becoming eligible to receive a pension or annuity from the pension or retirement system. The term "beneficial determination" shall not include a beneficial determination mandated by a final decision of a court of competent jurisdiction.
- (d) Nothing in this Section shall prevent the passage or adoption of any law, ordinance, resolution, rule, policy, or practice that further restricts the ability to provide a "benefit increase", "emolument increase", or "beneficial determination" as those terms are used under this Section.

EXPLANATION

The proposed amendment adds a section to the Illinois Constitution requiring a three-fifths majority vote to approve any pension or retirement benefit increase for public employees and officials.

The proposed amendment requires a three-fifths vote of each chamber of the General Assembly (the Senate and the House of Representatives) for a bill that provides a pension benefit increase, except for appropriation bills. "Benefit increase" means a change to any pension or other law that results in a member of a pension or retirement system receiving a new benefit or an enhancement, including any changes that (i) increase the amount of a member's pension, or (ii) reduce or eliminate the eligibility requirements or other terms or conditions a member must meet to receive a pension. It also means a change to any pension or other law that expands the class of persons who may become members of any pension or retirement system. An increase in salary or wage level, by itself, does not constitute a "benefit increase," unless the increase exceeds limitations provided by law.

The proposed amendment would also require a two-thirds vote for lawmakers to override a governor's veto or accept a governor's proposed changes in a rewrite of pension increase legislation. Currently, it takes a three-fifths vote to override a veto and only a simple majority to accept a governor's changes.

The proposed amendment requires approval of three-fifths of the members of the governing body of a unit of local government or school district for any ordinance, resolution, rule, or other action that provides an enhancement or emolument increase to an employee or officer that has the effect of increasing the pension of that employee or officer. "Emolument increase" means the creation of a new, or enhancement of an existing, advantage, profit, or gain that an official or employee receives by virtue of holding office or employment, which includes compensated time off, bonuses, incentives, or other forms of compensation. An increase in salary or wage level, by itself, does not constitute an "emolument increase," unless the increase exceeds limitations provided by law.

The proposed amendment requires approval of three-fifths of the members of the governing body of a pension or retirement system for any action that results in a "beneficial determination." A "beneficial determination" is an interpretation or application of law that reverses or supersedes a previous decision if that interpretation or application (i) results in an increase in the overall amount of pension benefits received by a member or (ii) results in a person becoming eligible to receive a pension. "Beneficial determination" does not include a final decision mandated by the courts.

Voters that believe the Illinois Constitution should be amended to require a three-fifths majority vote to approve any pension or retirement benefit increase for public employees and officials should vote "YES" on the question. Three-fifths of those voting on the question, or a majority of those voting in the election, must vote "YES" in order for the amendment to become effective. Voters that believe the Illinois Constitution should not be amended to require a three-fifths majority vote to approve any pension or retirement benefit increase for public employees and officials should vote "NO" on the question.

Arguments In Favor of the Proposed Amendment

- (1) A higher vote requirement would help prevent unfunded future liability for pension benefits.
- (2) Requiring a three-fifths vote would provide better accountability.
- (3) A three-fifths vote requires greater consensus among parties.

Unfunded Liability

Currently, the public retirement system is not financially stable and is significantly underfunded. A higher vote requirement to enact pension benefit increases will help to maintain fiscal responsibility and make it more difficult to further burden the public retirement system.

Provide More Accountability

The proposed amendment provides more accountability in the legislative process by requiring more votes to pass a pension benefit increase. Since the cost of benefit increases comes at a later date, the price to the taxpayers is not always noticed immediately. A higher

vote requirement will signify to the governing body that they are taking a serious action and will encourage greater in-depth thought before passage.

Greater Consensus

A three-fifths vote requirement means the members of the governing body, regardless of political affiliation, will need to work together to reach an agreement. A greater consensus would provide for better decisions and more serious deliberation. Given the importance of pension benefit increases, and their subsequent impact on taxpayers, greater agreement would be beneficial.

Arguments Against the Proposed Amendment

- (1) A higher vote requirement may limit the bargaining power of employers and employees.
- (2) There is the possibility of disagreement on what constitutes a benefit increase.
- (3) Requiring a supermajority for pension benefit increases could make it more difficult to recruit the best people to work in government service.

Decreased Bargaining Power

Many government employees are represented by labor unions that bargain on their behalf for particular benefits. This constitutional amendment may make it more difficult for unions to bargain for certain increased benefits for their employees.

In addition, many government employers may prefer to bargain over these benefits to give incentives to employees to do their jobs well. This constitutional amendment could remove bargaining power from both the government employer and government employee.

Possibility of Disagreement on Terms

The proposed amendment creates new definitions for the terms "benefit increase," "emolument increase," and "beneficial determination," which are not defined in other statutes or in existing case law. These definitions could generate litigation, resulting in additional costs. There may also be disagreement amongst the governing body on whether a bill, resolution, or other action constitutes a "benefit increase," "emolument increase," or "beneficial determination."

Recruiting Employees for Government Jobs

Like any employer, units of government wish to attract good employees. This constitutional amendment may make it more difficult for employers to increase benefits to employees and, therefore, make it harder to attract the best people to government service.

FORM OF BALLOT

Proposed Amendment to the 1970 Illinois Constitution

Explanation of Amendment

Upon approval by the voters, the proposed amendment, which takes effect on January 9, 2013, adds a new section to the General Provisions Article of the Illinois Constitution. The new section would require a three-fifths majority vote of each chamber of the General Assembly, or the governing body of a unit of local government, school district, or pension or retirement system, in order to increase a benefit under any public pension or retirement system. At the general election to be held on November 6, 2012, you will be called upon to decide whether the proposed amendment should become part of the Illinois Constitution.

If you believe the Illinois Constitution <u>should be amended</u> to require a three-fifths majority vote in order to increase a benefit under any public pension or retirement system, you should vote "YES" on the question. If you believe the Illinois Constitution <u>should not be amended</u> to require a three-fifths majority vote in order to increase a benefit under any public pension or retirement system, you should vote "NO" on the question. Three-fifths of those voting on the question or a majority of those voting in the election must vote "YES" in order for the amendment to become effective on January 9, 2013.

YES For the proposed addition of Section 5.1 to Article XIII NO of the Illinois Constitution.

CAPITOL BUILDING SPRINGFIELD, ILLINOIS OFFICE OF THE SECRETARY OF STATE

I, Jesse White, Secretary of the State of Illinois, do hereby certify that the foregoing is a true copy of the Proposed Amendment, the Explanation of the Proposed Amendment, Arguments in Favor of the Amendment and Arguments Against the Amendment and a true copy of the Form of Ballot for this call at the regularly scheduled general election on Tuesday, November 6, 2012, as set forth in House Joint Resolution 93 of the 97th General Assembly in compliance with the Illinois Constitutional Amendment Act.



IN WITNESS WHEREOF, I hereunto set my hand and affix the Great Seal of the State of Illinois. Done in the City of Springfield, this 18th day of June 2012.

Jesse White

Secretary of State

Desse White

These voter informational materials also are available in English, Chinese, Polish, Hindi and Spanish at www.cyberdriveillinois.com, or by writing the Secretary of State's office at 111 East Monroe Street, Springfield, IL 62756.

For additional copies contact: Jesse White

Presorted Standard US Postage Paid Springfield, IL. Permit No. 93

111 East Monroe Street

Secretary of State

Springfield, Illinois 62756

WWW. CYBERDRIVEILLINOIS. COM

Residential Customer ILLINOIS

These voter information materials also are available in Chinese, Polish, Hindi and Spanish at www.cyberdriveillinois.com or by writing the Secretary of State's office at 111 East Monroe Street, Springfield, IL 62756.